

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
MM4336RE

Inventor: Robert SKVORECZ

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/772,278	March 15, 2001	Tan LE	01109	3632	9274

Invention: Robert SKVORECZ

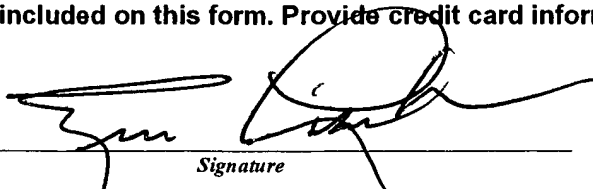
COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

March 25, 2005 - applicant requests a two-month extension time until July 25, 2005 for filing Appeal Brief.☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$250.00

- ☐ A check in the amount of the fee is enclosed.
- ☒ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 01-1944
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.
SignatureEugene Lieberstein
Reg. No. 24,645

Dated: July 18, 2005

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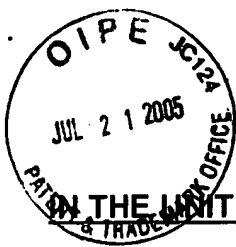
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M. McGarry

Typed or Printed Name of Person Mailing Correspondence

CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF APPEALS

In re Application of

Robert Skvorecz :

Reissue of US Patent 5,996,948 EXAMINER: Tan Le

SERIAL NO: 09/772,278 : : GROUP: 3632 :

FILED: March 15, 2001 :

FOR: WIRE CHAFING STAND ;

BRIEF FOR APPELLANT

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SIR:

All necessary fees in connection with this Appeal Brief including the two-month extension fee should be deducted from Deposit Account No. **01-1944**.

(1) **Real Party In Interest:**

Robert Skvorecz, as appellant, is currently the real party in interest.

(2) **Related Appeals and Interferences:**

There is no related appeal or interference proceeding.

(3) Status of Claims:

Claims 1-7 are pending in the application with claims 1,2 and 5 rejected under 35 USC102(b) and claims 1-5 and 7 rejected under 35 USC 251. The Claims are set forth in the Appendix attached hereto and made a part hereof.

(4) Status of Amendments Filed Subsequent to Final Rejection:

No amendments to the claims were filed subsequent to the final rejection.

(5) Summary Of Invention

The invention relates to a wire chafing stand which is a mechanical structure for supporting pre-cooked food at a remote location relative to where the food is cooked. The remote location is typically an outdoor location where an event such as a party or barbeque is to be held. The wire chafing stand supports a warming pan, preferably of aluminum, into which the pre-cooked food is placed. A burner, referred to as a chafing fuel heater, may be placed under the pan to keep the food warm.

A wire chafing stand is constructed of wire rod steel and assembled using a conventional fixture bending jig into a chafing stand which will support the warming pan. Accordingly, it is inexpensive to manufacture a wire chafing stand. However, and in direct comparison, the cost of transporting a wire chafing stand relative to its cost is significant . This is attributable to the size of each fully assembled wire chafing stand and to the volume of space which a fully assembled wire chafing stand occupies. To minimize the cost of transporting wire chafing stands it is desirable to package a multiple number of wire chafing stands in a container nested into one another with the

expectation of the local distributor or the retail establishment to separate them upon delivery. Unfortunately, nesting of conventional wire chafing stands inevitably results in wedging of the stands into one another making it difficult, if at all possible, to separate the stands without causing damage.

The present invention, which issued as US Patent No. 5,996,948 is directed to a solution to the problem of nesting multiple wire chafing stands at minimal risk of wedging and to a solution facilitating their separation.

The wire chafing stand of the subject reissue patent application is constructed from wire rod steel and includes an upper rim which forms a closed geometrical configuration circumscribing an area preferably of rectangular geometry adapted to accommodate a warming pan and a pair of wire legs which support the upper rim. The wire chafing stand may also employ a lower rim located below the upper rim for use as a lower tray.

The solution to the problem of nesting, upon which the parent application was allowed, is attributable to the novel arrangement of "offsets" located either in the upper rim or in the upright section of the wire legs. The term "offset", as used in the patent and in the claims, is defined on pages 7 and 8 of the patent specification, i.e., as set forth in column 2 of the patent lines 7-8 as being an indent for causing lateral displacement of each wire leg relative to the point of attachment of each wire leg with the upper rim so that the wire legs of one chafing stand can nest within another chafing stand without wedging. If wedging is prevented the wire chafing stands will readily separate from one another.

(6) Discovery Of Error In US Patent No. 5,996,948

After issuance of US Patent No. 5,996,948 the applicant, in a discussion with the attorney of record relating to the scope of the issued claims, informed the attorney of record that although the lower rim in the wire chafing stand is a useful and desirable feature it is not essential to the construction of the wire chafing stand and has nothing to do with the problem of wedging. Since the wire chafing stand as described in the description of the patent application does not teach the lower rim as being essential to the construction of the wire chafing stand and is unrelated to the problem of wedging it became apparent that the recitation of the lower rim in claim 1 was an error. Based upon the existence of an error in the issued patent and the fact that the lower rim was not a factor during the prosecution of the application a reissue application was filed under 37 CFR 1.63 to remove the recitation of the lower rim from claim 1 and to include it as a dependent claim. The subject reissue application was filed in a period of time of less than two years from the issue date, claiming that the original patent was wholly or partially inoperative by reason of applicant claiming less than applicant had a right to claim.

(7) Prosecution Of Reissue Application

The reissue application was finally rejected on December 16, 2002 and a Notice of Appeal was filed on March 13, 2003 followed by the filing of an Appeal Brief dated May 13, 2003. Thereafter, at the election of the Examiner, the finality of the final rejection, upon which the appeal was based, was withdrawn and the prosecution reopened. A third office action dated May 4, 2004 was issued including a rejection of the

claims 1, 2 and 5 under 35USC102(b) as being fully anticipated by US Patent 5,503,062 (Buff IV). This was a new ground of rejection raised for the very first time. Applicant responded without any amendment to the claims and the Examiner issued a new final rejection dated December 30, 2004 upon which this appeal is now based.

(8) Petition Filed With Director Of Group 3600

In response to this new final rejection applicant submitted a Declaration executed by the Patentee Under 37CFR 1.132 which the Examiner has refused to make of record. Accordingly, applicant filed a Petition dated May 9, 2005 directed to the Director of Group 3600 to enter the Declaration Under 37 CFR 1.132. This petition is still outstanding . A copy of the Declaration filed Under 37 CFR 1.132 is attached hereto, should the petition be granted before the appeal is taken up for consideration on its merits.

(9) Concise Statement Of Issues

1. Claims 1, 2 and 5 stand finally rejected under 35 USC 102(b) "as being fully anticipated by US Patent 5,503,062 (Buff IV)".
2. Claims 1- 5 and 7 stand finally rejected under 35 USC 251 "as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based".
3. Claim 6 is an independent claim which is identical to claim 6 in the issued patent and has again been re-allowed.

(10) **Grouping Of Claims**

In the rejection under 35 USC 102(b) claims 2 and 5 have been separately argued and cannot be grouped together with claim 1. However, the claims 1-5 and 7 may be grouped together relative to the rejection under 35 USC 251.

(11) **Argument**

(a) The rejection under 35 USC 102(b) will be considered first in that claim 1 is the only independent claim under rejection and if it is concluded that claim 1 lacks novelty, the issue of recapture under 35 USC 251 becomes moot.

As pointed out in Applicants response to the final rejection dated March 22, 2005, it is not possible for Buff '062 to be teaching the feature of "a plurality of offsets located either in the upright sections of the wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging" as is recited in reissue claim 1. This is explained in detail in the declaration of Applicant filed under 37CFR 1.132. However, notwithstanding the declaration filed by applicant under 37CFR 1.132, it will become apparent that the device taught by Buff is incapable of teaching the above feature to facilitate nesting of one stand into another without wedging. The term "offset" is a term which is defined in the subject patent in column 2 lines 7-8 as an indent in each wire leg at a specific location to cause a lateral displacement of each wire leg relative to the point of attachment of the wire leg with the first (upper) rim. As a result of this displacement the wire legs of one chafing stand can nest within another chafing stand without wedging. This functional requirement (of a lateral displacement) is part of

the definition of the term “offset” and is specifically included in reissue claim 1 as indicated above. In contradistinction, idem “52” in Buff, which the Examiner alleges constitutes an “offset”, cannot function to cause a lateral displacement of each wire leg relative to the point of attachment of the wire leg with the upper rim nor does the disclosure of Buff suggest this. The alleged offsets “52” in Buff are located only at the opposite longitudinal ends of the outer support frame 20 (see Figure 2) and are not located on the lateral sides of the support wire 40. As such they cannot cause a lateral displacement of each wire leg (50 in Buff) relative to the point of attachment of the wire leg to the upper rim. Moreover, since the alleged offsets “52” in Buff ‘062 are formed by bending the upstanding handles 38 over (emphasis added) the support wire 40, as is shown in Figure 2 of Buff ‘062, they cannot be located either in the upright sections of the wire legs or in said first rim as is specified in reissue claim 1. Accordingly the rejection of claim 1 under 35 USC 102(b) is without support in Buff.

It is further pointed out that Buff ‘062 teaches, in column 5 lines 31-34, that the shoulders 52, which the Examiner has interpreted as “offsets”, function to “nestably receive the support rim 44 of the roasting pan 16” to provide support for the roasting pan. This is an objective which is entirely different from the objective of the offsets in claim 1 and has nothing to do with the problem of nesting of a chafing stand into another chafing stand. Moreover, column 5 lines 13-16 in Buff ‘062, which was specifically referred to by the Examiner, discusses only the arrangement of support members to facilitate nesting of a disposable aluminum foil roasting pan 16 into the reinforcing assembly 20, which is a support structure 20 formed of two parts 40 and 49. The two parts 40 and 49 of the support structure 20 are not taught to be used

separately or independent of one another as the Examiner is apparently doing. Again this has nothing to do with the problem of nesting of a chafing stand into another chafing stand and does not teach the claimed features needed to overcome wedging.

Furthermore, the support wire 40 in Buff '062 is not a wire chafing stand nor is the part 49 and there is nothing in the disclosure of Buff '062 to support making the assumption that the support wire 40 is a chafing stand or that the structure 20 representing the combination of two parts 40 and 49 is a chafing stand or that Buff suggests any reason for nesting either one or both parts into another stand of equal construction.

Accordingly, Buff '062 does not anticipate reissue claim 1 and the final rejection of claim 1 under 325USC102(b) should be overruled.

As regards claim 2, the Examiner alleges that the idems 52 in Buff '062 can be interpreted to read on the wording of claim 2 which requires the offsets in said upright sections to divide each upright section into two segments. The idems 52 in Buff '062 are used solely to support the roasting pan and are not properly located to divide each upright section into two segments. Accordingly, this allegation is inconsistent with the teaching of Buff and is without merit. Moreover, claim 2 is a dependent claim and is otherwise allowable for the same reasons as given above in connection with claim 1.

Similarly claim 5 also refers to the separation of the upright sections into segments which has no correlation to the device taught in Buff '062 no matter how broadly one interprets the assembly 10 in Buff '062. For this reason claim 5 is clearly patentable over Buff . Moreover, claim 5 is otherwise allowable since it is a dependent claim.

(b) The Examiner has again repeated the final rejection of claims 1-5 and 7 under 35 USC 251 based upon the recapture rule relying on pages 1-2 of the Memorandum of the Patent Office dated August 4, 2003. The Examiner states that the recapture rule requires the analysis of a three step process. In the first step the Examiner identifies the words in claim 1 deleted from claim 1 in the issued patent. Claim 1 of the subject reissue application (hereafter "reissue claim 1") is shown attached hereto as amended.

The second test step as pointed out by the Examiner requires determining whether the broader aspects of the reissue claims relate to surrendered subject matter. The Examiner proceeds to make the statement in paragraph 2 of Page 4 that "Changes to claim 1 were made by Applicant in an effort to make claim 1 narrower and to overcome the prior art rejection in order to make the claim allowable". This statement is at best only partially true. The Examiner is referring to an amendment filed during the patent prosecution by applicant dated July 26, 1999 in which claim 1 was amended. A copy of the exact submission of claim 1 as amended on July 26, 1999 is as follows:

1. (As amended) A wire chafing stand comprising an upper rim of wire steel which forms a closed geometrical configuration circumscribing a first surface area, a lower rim of wire steel forming a closed geometric configuration circumscribing a second surface area with said surface area being larger than said second surface and having a plurality of wire legs [pair of wire legs of equal length affixed at one end thereof to the upper rim and affixed to the lower rim at an equal location substantially approximate the opposite end of each wire leg such that the upper rim and lower rim lie in substantial parallel alignment to one another with the wire legs extending equal distances below the rim to uniformly support the stand at opposing ends thereof and having a plurality of offsets in the upper rim of said stand or in the wire

legs at the point of interconnection therebetween.] with each wire leg having two upright sections interconnected to one another at a location below the lower rim in a configuration forming a base support for the stand to rest upon with each upright section extending upwardly from said base support to form an angle equal to or greater than 90° with respect to a horizontal plane through said base support and being affixed to the upper rim adjacent one end thereof and to said lower rim at a relatively equal distance below the point of attachment to said upper rim and further comprising a plurality of offsets located either in said upright sections of said wire legs or in said upper rim for laterally displacing each wire leg relative to said upper rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging.

It is self evident from the amended language of the above claim 1 that going from a “pair of wire legs of equal length . . . at an equal location . . . such that the upper rim and lower rim lie in substantial parallel alignment to one another etc. . . .” to the language “a plurality of wire legs” and without the requirement “of equal length” or “at an equal location” or the requirement that “such that the upper rim and lower rim lie in substantial parallel alignment” constitutes a substantial broadening of the claim and not a narrowing of the claim. Claim 1 was, however, also narrowed by adding the following language: with each wire leg having two upright sections interconnected to one another ...in a configuration forming a base support for the stand to rest upon with each upright section extending upwardly from said base support to form an angle equal to or greater than 90° with respect to a horizontal plane through said base support and being affixed to the upper rim adjacent one end thereof and further comprising a plurality of offsets located either in said upright sections of said wire legs or in said upper rim for laterally displacing each wire leg relative to said upper rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging.. As

recited, this language has not been changed in reissue claim 1, other than to change "upper" to read --first--.

The Examiner also makes reference to a statement made by Applicant in the above amendment that "Applicant has amended claims 1 and 5 to clearly distinguish the subject invention from the disclosure in Andrews US Patent No. 1,688,846". This statement is partially true in that Andrews does not teach forming a base support for the stand to rest upon with each upright section extending upwardly from said base support to form an angle equal to or greater than 90° with respect to a horizontal plane through said base support and does not teach a plurality of offsets located either in said upright sections of said wire legs or in said upper rim for laterally displacing each wire leg relative to said upper rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging. All of this was pointed out to the Examiner and none of this wording was changed or amended in the filing of the reissue application. Instead, the Examiner makes reference to the wording of the lower rim which was originally revised in the amendment to claim 1 as recited above (see claim 1 as amended). The amended language recites the relative positions between the upper and lower rims in the stand and removes from claim 1 the limitation ---that the upper and lower rim are in parallel alignment---. Accordingly, the scope of the lower rim feature in the amended claim is clearly broader than in the original version particularly since an upper and lower rim per se were acknowledged as being known in the prior art. More importantly, it should be noted that the Examiner from the outset of the prosecution and in the very first Office Action rejected the claims indicating that an upper and lower rim in a chafing stand with each having a closed geometrical

(rectangular) configuration are known features. Applicant never argued this point nor did applicant at any time during the prosecution suggest or argue that the lower rim was a distinguishing feature for overcoming the prior art or indicate that the lower rim had any function in connection with facilitating nesting. The presence or absence of the lower rim or their relationship to one another did not ever play a part in the allowance of claim 1.

The Examiner in the last paragraph of page 5 of the final rejection concludes that “The record of the original application shows that the broadening aspect in reissue claim 1 relates to subject matter that applicant previously surrendered during the prosecution of the application....”. The record clearly supports the opposite of this statement. Accordingly, the rejection of claims 1-5 and 7 under 35 USC 251 based upon the recapture rule should be overruled.

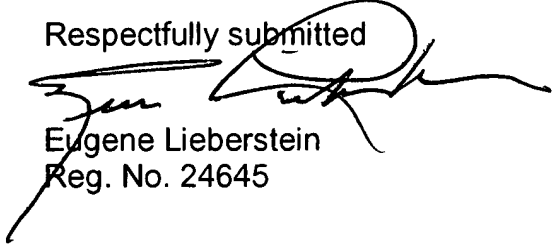
The Examiner’s allegation that the record shows that “the broadening aspect of the reissue claim 1” relates to subject matter that Applicant previously surrendered is simply a conclusion of the Examiner and is contrary to the record. The reissue application was filed under 37 CFR 1.63 giving applicant the right to broaden claim 1. The amendment filed during the prosecution of the patent, as explained above, broadened the originally filed claim language in relation to the upper and lower rims and the number of wire legs as well as to introduce narrow language to overcome the prior art. The narrow language relates to the “offsets” and to facilitating “nesting” and clearly distinguishes the invention from the prior art. Moreover, the application was allowed based upon this distinction without reference to the lower rim. In addition, as explained above, the distinguishing language relating to “offsets” to facilitate nesting was not

amended in reissue claim 1. Contrary to the assertion of the Examiner, the facts in this case are the exact opposite from the facts in *Pannue v Storz Instruments* 59 USPQ 2d 1597 since, in this case, the amendment to original claim 1 clearly broadened the relation between the upper and lower rims in that parallel alignment is no longer required and that the lower rim did not play a part in the allowance of the claim. Accordingly, the removal of this feature does not relate to subject matter previously surrendered and the recapture rule under 35 USC 251 does not apply. Any other interpretation would preclude an applicant from filing a broadening reissue application under 37 CFR 1.63 as long as an amendment is filed during prosecution. This is not the intent of recapture and, as a practical matter, such an interpretation of recapture abrogates the right of an applicant under 37 CFR 1.63 to broaden a claim, independent of the error or when the error occurred, since the claims in almost all applications are amended at least in some fashion during prosecution.

(9) **Conclusion**

The Examiner has clearly failed to substantiate invalidity of the reissue claims either under 35USC 102(b) or under the recapture rule in 35 USC 251. Accordingly, Applicant respectfully solicits the Board of Patent Appeals to reverse the final rejection of claims 1-7.

Respectfully submitted



Eugene Lieberstein
Reg. No. 24645

MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, MAIL STOP APPEAL BRIEF – PATENTS, on July 18, 2005.



Date: July 18, 2005



APPENDIX

Claims:

1. **(Amended)** A wire chafing stand comprising a first [an upper] rim of wire steel which forms a closed geometrical configuration circumscribing a first surface area, [a lower rim of wire steel forming a closed geometrical configuration circumscribing a second surface area with said first surface area being larger than said second surface area] and having at least two [a plurality of] wire legs with each wire leg having two upright sections interconnected to one another [at a location below the lower rim] in a configuration forming a base support for the stand to rest upon with each upright section extending upwardly from said base support to form an angle equal to or greater than 90° with respect to a horizontal plane through said base support and being affixed to the first [upper] rim adjacent one end thereof [and to said lower rim at a relatively equal distance below the point of attachment to said upper rim] and further comprising a plurality of offsets located either in said upright sections of said wire legs or in said first [upper] rim for laterally displacing each wire leg relative to said first [upper] rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging.
2. A wire chafing stand as defined in claim 1 wherein said plurality of offsets are in said upright sections and divide each upright section into two segments lying in different planes relative to one another.
3. **(Amended)** A wire chafing stand as defined in claim 7 [2] wherein said first and second rim [upper and lower rims] form a geometry selected from the class consisting of square, oval and rectangular configurations.
4. A wire chafing stand as defined in claim 3 wherein said wire legs support said stand from opposite sides thereof with each wire leg having a unitary construction and having two generally "U" shaped sections extending between an intermediate section defining a handle for the stand.

5. A wire chafing stand as defined in claim 1 wherein said plurality of offsets are welded to said wire legs at the separation of the upright sections into segments.

6. A wire chafing stand comprising an upper rim of wire steel which forms a closed geometrical configuration circumscribing a first surface area, a lower rim of wire steel forming a closed geometrical configuration circumscribing a second surface area with said first surface area being larger than said second surface area and having two wire legs for supporting said stand at opposite ends thereof with each wire leg being of unitary construction having two upright sections of substantially equal length with the upright sections being interconnected to one another in a generally "U" shaped configuration below said lower rim to form a base support for the stand to rest upon and being interconnected to one another adjacent the upper rim for defining a handle for the wire chafing stand and being welded at predetermined locations to the upper and lower rims such that the upper and lower rims lie in substantial parallel alignment to one another and with each upright section extending upwardly from the base support to form an angle equal to or greater than 90° with respect to a horizontal plane through said base support and further comprising a plurality of offsets located in said upright sections of said wire legs which separate the upright sections into segments lying in different planes relative to one another for laterally displacing each wire leg relative to said upper rim so as to facilitate the nesting of a multiplicity of stands into one another without significant wedging.

7. **(New)** A wire chafing stand as defined in claim 1 further comprising a second rim of wire steel located below said first rim with said second rim circumscribing a second surface area smaller than said first surface area and with said upright sections being affixed to said second rim at a relatively equal distance below their attachment to the first rim.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN THE MATTER OF:

REISSUE OF U.S. PATENT NO. 5,996,948

NAME OF PATENTEE: ROBERT SKVORECZ

ISSUED: DECEMBER 7, 1999

TITLE OF INVENTION: WIRE CHAFING STAND

DECLARATION OF PATENTEE UNDER 37 CFR 1.132

Assistant Commissioner of Patents
& Trademarks
Washington, DC 20231

S I R:

As the sole owner and patentee of the entire interest of U.S. Patent No. 5,996,948, I hereby declare that:

(1) I have a mechanical engineering degree and represent the first inventor of a wire chafing stand for supporting a warming pan of pre-cooked food which I have successfully commercialized into a multi-million dollar business. I possess a thorough knowledge of the invention in the reissue application of the subject patent '948 and have studied the reference US Patent Number 5, 503, 062 ("Buff '062") cited by the patent Examiner in rejecting the claims 1, 2 and 5 of the subject reissue application as being anticipated under 35 USC 102(b) in view of the teaching of this reference.

(2) Claim 1 of patent '948 and the subject reissue application of which claims 2 and 5 depend includes the limitation---“a plurality of offsets located either in the upright sections of said wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging”---.

(3) The Examiner has elected to interpret reference items 52 in Buff '062 as representing “offsets” corresponding to the claimed “offsets” and has alleged that Buff '062 teaches “a plurality of offsets 52 located either in the upright sections of the wire legs 50 or in said first rim 40 for laterally displacing each wire leg 50 relative to said first rim 40 to facilitate the nesting of a multiplicity of stands into one another without significant wedging” exactly as is taught in the subject patent and reissue application of applicant. The Examiner has further stated that Buff '062 “teaches in Column 5 lines 13-16 and lines 30-34 that the offsets can facilitate the nesting of a multiplicity of stands into one another”.

(4) The cited reference Buff '062 teaches a support structure (reinforcing assembly 10) for a disposable aluminum roasting pan in which turkeys can be roasted in an oven at high temperature. The reinforcing assembly 10 (hereafter “support structure”) is an assembly including an outer support frame 20 and an internal support rack 12. The outer support frame 20 as shown in Figure 2 is itself composed of both an upper support wire 40 which surrounds the sidewall of the roasting pan 16 and a lower support wire 42. The upper support wire 40 and the lower support wire 42 have criss-crossing members 48 and 49 which intersect at intersecting points 58 where the members are attached to one another and have upwardly extending frame support members 50 on opposite sides of the pan 16 which serve as legs. The upstanding frame support members 50 are bent over the upper support wire 40 to form bends 52 and handles 38. The bends 52 permit placement of the roasting pan 16 upon or in the outer support frame 20.

The Examiner elects to equate the bends 52 in the outer support frame 20 of Buff '062 as equal to the "offsets" in claim 1 both in structure and function and to equate the outer support frame 20 of the Buff '062 assembly to the "stand" in claim 1. This is not possible; i.e., it is mechanically impossible to nest a multiplicity of the "outer support frames 20" of Buff '062 into one another without significant wedging as called for in claim 1. The reason for this is as follows:

(a) The alleged "off-sets" 52 in Buff '062 are formed by bending over the upstanding frame support members 50 over the upper support wire 40 and therefore cannot function to laterally displace the legs 50 relative to the wire 40 as called for in claim 1 of applicants patent and reissue application. In applicants claim 1 and in the patent specification the offsets must cause a lateral displacement of each wire leg relative to the upper (first) rim to facilitate nesting of a multiplicity of stands into one another without significant wedging. A "lateral" displacement can only physically occur in accordance with claim 1 when the plurality of offsets laterally displace the position of each wire leg relative to the first rim. In addition, and as explained in column 4 lines 7-24, a lateral displacement must be caused to occur in each of the wire leg(s) in a substantially horizontal direction from a predetermined location below the upper (first) rim. In Buff '062 the so called offsets 52 are located only at the opposite longitudinal ends of the outer support frame 20 and therefore cannot cause a lateral displacement of each wire leg 50 relative to the upper (first) rim and the bands 52 will not accommodate a nesting of outer support frames 20. In Buff '062 the wire legs 50 on the opposite sides of the roasting pan 16 do not have bends 52 and this would cause serious interference if one attempted to nest a multiplicity of outer support frames 20 into one another. Moreover, because the so called offsets or bends 52 in Buff '062 are formed by bending the upstanding frame support members 50 over the upper support wire 40 they are, by definition, located over the upper support wire 40 and, as such, cannot cause a "lateral" displacement of each wire leg relative to said first rim nor will they facilitate the nesting of a multiplicity of stands into one another without significant wedging" as is required in

claim 1 and as explained in the patent specification. In addition, claim 1 requires the offsets to be located either in the upright sections of said wire legs or in said first rim. It is not possible for the bends 52 in Buff '062 to be located in the first rim, i.e., in wire 40 since they are formed over the wire 40. Thus, for all of above reasons the construction of Buff '062 does not teach "a plurality of offsets located either in the upright sections of said wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging" ---.

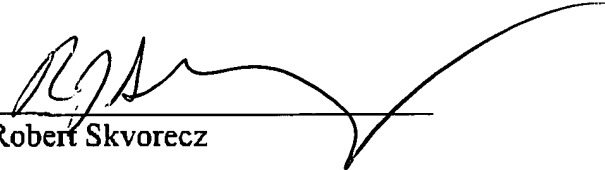
(b) The statement of the Examiner that Buff '062 "teaches in Column 5 lines 13-16 and lines 30-34 that the offsets "52" can facilitate the nesting of a multiplicity of stands into one another is totally false. Buff '062 does not address or mention the subject of nesting of a stand, which would correspond in Buff '062 to nesting the support structure, i.e., the reinforcing assembly 10, into one another or does Buff '062 suggest even the possibility of nesting the outer support frames 20 by themselves into one another. To the contrary, Buff '062 in Column 5 lines 13-16 and lines 30-34 directly teaches and addresses the need for a stop for the roasting pan 16 to be nested upon or in and nothing else. Column 5 lines 15-16 specifically uses the words--" in order to facilitate nesting of a disposable aluminum foil roasting pan therein" --and so does lines 30-34 of column 5. No mention whatsoever is made of nesting one wire support stand into another which is what claim 1 in applicant's patent addresses and solves to enable the transportation of chafing stands at minimal cost. This is accomplished in the chafing stand of the subject patent and reissue patent application through the use of --"a plurality of offsets located either in the upright sections of the wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging". In fact the claim language specifically calls for nesting of stands into one another and not the nesting or placement of the pan into the support structure.

(c) The reinforcing assembly 10 taught by Buff '062 forms a support structure to support a disposable aluminum roasting pan for roasting turkeys in an oven and specifically teaches that the reinforcing assembly 10 consists of both an outer support frame 20 and an internal support rack 12 in combination. The Examiner has elected to ignore the internal support rack 12 as being non-existent or irrelevant. Instead in Buff '062 the internal support rack 12 is an integral part of the support structure of Buff '062. In addition, nothing in Buff '062 supports the contention that the outer support frame 20 can be used by itself as a chafing stand or can be nested into one another. Accordingly, Buff '062 does not teach or contemplate nesting a multiplicity of reinforcing assemblies 10 or teach segregating the outer support frame 20 from the internal support rack 12 in order to nest them.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

5-6-05

Date


Robert Skvorecz